

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES**

Application No.: 09/978,432
Applicant: : Yaseen et al.
Filed : October 15, 2001
Title: : End-to-End Governed Data Transfers in a Network
Art Unit : 2143
Examiner : Bilgrami, Asghar H.
Docket : 131105.1001
Customer No : 32914

MAIL STOP: APPEAL BRIEF PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

REPLY TO EXAMINER'S ANSWER

This is in reply to the Examiner's Answer, dated October 19, 2007.

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(i) **STATUS OF CLAIMS**

Claims 1-15 stand rejected pursuant to a Final Office Action mailed June 13, 2005. Claims 1-15 are presented for appeal.

(ii) **STATUS OF AMENDMENTS**

No amendment has been filed subsequent to the mailing of the Final Office Action.

(iii) **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether the rejection of 1-3, 5-10 and 13-15 under 35 U.S.C. §102(e), as being anticipated by U.S. Patent Publication No. 2002/0107908 of Dharanikota et al. ("Dharanikota et al.") was in error.

2. Whether the examiner has made a *prima facie* rejection under 35 U.S.C. §103(a) for claims 4, 11 and 12 based on the combination of Dharanikota et al. and U.S. Patent Publication No. 2002/0018264A1.

(iv) **ARGUMENT**

A. **Rejection of Claims 1-3, 5-10 and 13-15 Under § 102(e)**

1. **New Reasoning In Support of Rejection**

Although the examiner continues to reject claims 1-3, 5-10 and 13-15 as being anticipated by Dharanikota et al., he has supplied new, additional reasoning in the Grounds of Rejection in support of the rejection of claims 1 and 9. This reasoning was not contained in the final rejection, and therefore, presumably, is in response to applicant's Appeal Brief. Applicant is responding to this new reasoning of the examiner.

The Appeal Brief made the point that the passages cited by the examiner in Dharanikota did not mention or teach setting ingress and egress rate restrictions for each of a plurality of nodes connected by at least one communication channel. Appeal Brief at 10. Furthermore, the Appeal Brief made the point that, at least with respect to claim 1, a management node is called for that disallows at least a portion of a transmission across the communications channel between two nodes when an egress rate restriction on one of the nodes or an ingress rate restriction on the other node for that channel is violated by the transmission. *Id.* Although claim 9 does not expressly require a management node, the method claimed requires disallowance of at least a portion of the transmission on a communication channel between two nodes when either an egress rate restriction on one node or an ingress rate restriction on the other node is violated by the transmission. *Id.*

The examiner now cites, in the Grounds of Rejection paragraphs 27 and 28. Answer at 3. However, it is respectfully submitted that these two paragraphs do not disclose the limitations identified in the Appeal Brief as missing in Dharanikota et al. Repeated below are paragraphs 27 and 28 for reference:

[0027] In addition, the AS network **102** may be provided in an exemplary functional embodiment as an ISP/IAP network operated by a network service/access operator for providing various IP-based services, including access, in accordance with any established or heretofore unknown Differentiated Services (DIFFServ) scheme that supports IP-based QoS (IPQoS). As an ISP network, accordingly, the AS network **102** is operable to serve its subscribers via a plurality of networks, e.g., virtual private networks (VPNs) **110**, peer networks **108** (e.g., other ISP networks), enterprise or corporate networks **109** (e.g., intranets), and

circuit-switched networks or packet-switched networks for dial traffic, e.g., network **112**. Further, a public IP network such as the Internet **113** is also coupled to the AS network **102** for facilitating Internet-based services involving data, voice, multimedia, and video.

[0028] A plurality of DIFFServ-capable network elements or nodes (e.g., edge routes **104A-104E** and transit routers **106A-106D**) form the trusted domain of the AS network **102**, which is capable of instituting a range of SLAs with one or more of its subscribers including dial-up, corporate, wholesale or peer network customers. These SLAs may be simple standard service contracts for mass consumers or customized and multidimensional service agreements for business and corporate customers. An SLA, which defines end-to-end service specifications, may comprise any of the following components in the context of the present invention; (i) service availability; (ii) service levels offered; (iii) service guarantees; (iv) responsibilities; (v) service auditing; and (vi) pricing arrangements.

The undersigned representative cannot find any mention in these paragraphs of ingress and egress rate restrictions on each of the nodes and disallowance of data flow between two nodes when either or both of the stated rate restrictions are violated. Furthermore, there is not, for purposes of claim 1, a third node that disallows a requested transmission that violates either or both of the restrictions. The examiner has not, at least in the Grounds of Rejection, provided any reasoning beyond mere citation for how these paragraphs in Dharanikota et al. meet limitations previously identified by applicant as missing. Therefore, it is respectfully submitted that the examiner has again failed to submit evidence and reasoning sufficient to establish a *prima facie* case of anticipation.

2. The Examiner's Response to Applicant's Arguments

The examiner identifies in his response to applicant's argument six "issues." Presumably, these correspond to what he believes to be points raised in the Appeal Brief. If so, applicant respectfully disagrees with the examiner's mischaracterizations and the parsing of its argument in this manner. Rather than rehashing its arguments in trying to address the mischaracterizations, applicant would prefer to address a couple of themes that run through the examiner's discussion of the "issues."

First, the examiner appears to argue that the explanation in paragraph 28 of Dharanikota et al., that DiffServ-capable nodes described by the reference are capable

of instituting a “range of SLAs,” somehow teaches setting ingress and egress rates for each node for a communication channel between the nodes, and disallowing some or all of a transmission on the channel between two nodes if that transmission would violate either or both of the rates for the respective nodes. He explains that SLAs define “end-to-end” or source node to destination node, services specifications, and therefore “Dharanka [sic] clearly discloses plurality of elements having the capability of policing the data traffic.” Answer at 7. However, simply policing data traffic is not being claimed. The examiner is ignoring the details of the claim and, indeed, also the specific teachings of Dharanikota et al.

Dharanikota et al. state that an SLA comprises any of the following components: service availability, service levels offered, service guarantees, responsibilities, service auditing, and pricing arrangements. Dharanikota et al. at 28. Dharanikota et al. then explain that a plurality of QoS metrics or measurements are preferably used for quantifying the service requirements of a particular SLA. *Id.* The QoS metrics include bandwidth, throughput, delay, jitter, cost, loss probability or packet loss rate. *Id.* The QoS metric monitoring is effectuated at one or more of its DiffServ-capable network elements using various classes of service, namely constant bit rate, real time variable bit rate, non-real time variable bit rate, available bit rate, and unspecified bit rate. *Id.* at paragraph 29.

However, these metrics are monitored only at a particular node, between ingress and egress ports for that node, not between nodes. Dharanikota et al. explain at paragraph 50:

In order monitor these QoS parametrics, the present invention provides structures and techniques for measuring the traffic characteristics on the ingress side as wells as the egress side of the network element. *Id.* at 50 (emphasis supplied).

This monitoring requires marking of the traffic with the proper classification. See *id.* At 50 and 51. Dharanikota et al. then explain measuring rates at the egress card on the node and using color monitors for policing functionality. *Id.* at 55. However, this policing appears to be limited to a node. A node prioritizes data flows within the node based on packet classification and monitoring. See *id.* at 61. But, there is no suggestion of a scheme that looks at both an egress rate at one node and an

ingress rate at another node in order to decide whether to allow or disallow a transmission between nodes.

The examiner's repeated reliance on the mere fact that Dharanikota et al.'s DiffServ-capable network elements can be used to implement SLAs (e.g. on pp. 8, 10, and 15) does not remedy the fact that neither this high level, generalized concept nor the details of its DiffServ-capable network elements supplies the teachings necessary to anticipate the claimed subject matter. It suggests either a failure to appreciate the claimed subject matter or to understand the legal requirements of proving anticipation.

Second, the examiner relies several times (e.g. on pp. 9, 11, and 14) on Dharanikota et al.'s mention of "virtual ingress/egress pipes" or "VIEPs." Dharanikota et al. explains in the very paragraph cited by the examiner that these pipes are used for "transporting traffic flows through the network element." *Id.* at 31. These have nothing to do with communication channels between nodes. It is not clear to applicant why the examiner is citing these elements, as they do not appear to be relevant.

Third, on page 8, the examiner argues that the mere fact that there are management nodes on a network that are "capable of instituting the Service Level Agreements (SLA) with one or more subscribers (i.e. end users)" teaches, with respect to claim 1, use of a third node to disallow at least a portion of a transmission between two nodes when it exceeds either an egress restriction at one node or an egress restriction on another node. It is submitted that Dharanikota et al. does not, in fact, suggest this, and that this contention is one more example of how the examiner ignores what Dharanikota et al. are teaching. As demonstrated by the passages cited by the examiner and by applicant above, the network elements prioritize flows based on QoS parameters and the classes for which packets are marked. Even if these QoS parameters are distributed through a centralized policy management server (the examiner has not provided a cite in Dharanikota et al. for this), there is no suggestion that a management node directing a node to drop a transmission based on a rate violation.

In sum, it is respectfully submitted that the examiner has failed to provide a convincing response to applicant's arguments. Applicant maintains each of its points of error.

2. The Rejection of claims 5 and 13 Under § 102(e)

The examiner cites a hodge-podge of cases, misstating, overstating or taking out of context the holdings of those cases, in response to the point made by the applicant in its appeal brief that examiner has filed to cite passages of Dharanikota et al. with the limitations contained in the claims.

Applicant submits that these cases do not stand for the proposition that the examiner is free to use hindsight to read into a reference elements that are not present and for which there is no reasonable explanation provided for how those elements are inherently taught. This is exactly what the examiner has done. The examiner has the burden of making a *prima facie* case anticipation. If a reference anticipates, it should be possible to explicitly identify each such teaching with the same degree of particularity found in the claim.

(v) **CONCLUSION**

Applicant respectfully maintains its request to the Board of Patent Appeals and Interferences to reverse the final rejection of the examiner and instruct the examiner to issue a notice of allowance of all claims.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP, referencing docket number 131105.1001.

Respectfully submitted,

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Date: December 19, 2007

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